

Punishment for the Crime of Lynching

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

S. 24

A BILL TO ASSURE TO PERSONS WITHIN THE JURISDICTION OF EVERY STATE THE EQUAL PROTECTION OF THE LAWS BY DISCOURAGING, PREVENTING, AND PUNISHING THE CRIME OF LYNCHING

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**STATEMENT OF H. L. MENCKEN, EDITOR, ESSAYIST, AND CRITIC,
BALTIMORE, MD.**

Mr. MENCKEN. Mr. Chairman, shall I read this statement or just file it?

Senator VAN NUYS. No; we would prefer to have you read it, if you will.

Mr. MENCKEN. I shall read it. It is very short.

The problem before Congress is the simple one of providing legislative measures to execute the fourteenth amendment.

It is too manifest to need argument that every lynching deprives its victim of his life without due process of law, and denies him an equal protection of the law. The States are charged with punishing all such invasions as the common rights of the citizens, but some of them have failed in their effort to do so, and others have not honestly tried. Meanwhile, lynchings continue, and though they do not increase in number, they show some tendency to increase in savagery.

To large numbers of American citizens life in certain parts of the country becomes intolerably hazardous. They may be seized on any pretext, however flimsy, and put to death with horrible tortures.

No government pretending to be civilized can go on condoning such atrocities. Either it must make every possible effort to put them down or it must suffer the scorn and contempt of Christendom. That Congress has aspired to adopt necessary legislation seems to be agreed by all lawyers, though they differ somewhat as to the wisdom and the constitutionality of the bill now before the Senate. On this point I can offer no opinion, but I hope I may at least suggest that the best plan will be to make a beginning by enacting that bill and then waiting for the proper courts to advise upon it. If defects are found in it, however, whether legal or practical, they may be remedied. But nothing can be accomplished until an actual experiment is undertaken. Even if the worst comes to the worst and we find that preventing lynching is actually impossible, that discovery will at least be something.

Senator VAN NUYS. Thank you very much, Mr. Mencken, and I am sure Senator Costigan, the author of the bill, agrees with me, that you have been very helpful in bringing about a favorable consideration.

Mr. MENCKEN. Thank you, Senator.

Senator VAN NUYS. Of this bill through your writings.

Mr. MENCKEN. Thank you.

Senator VAN NUYS. Do you have any further observations, Mr. Mencken?

Mr. MENCKEN. I have not, unless you have some questions, Senator.

Senator VAN NUYS. You feel like Mr. Woodward, from your knowledge and activities, that this is not a sectional matter, and that in all parts of the United States the better class of citizenship favors this legislation; isn't that true?

Mr. MENCKEN. I think so. I know of no civilized man who is in favor of lynching. There are differences of opinion as to whether this bill will achieve the end that it seeks.

There has been some discussion here earlier today, especially when Senator Wagner was on the stand, as to whether the provision levying a fine on the community would work. I am not prepared to argue that that as it stands is completely defendable. My opinion is that that provision as it stands probably offers a ground for argument against the bill that might be disposed of by leaving out the provision, which does not seem to be necessary at all.

The chief virtue of this bill, as I see it, is that it does not try to set up lynching as a new crime and provide new penalties for it. It presumes lynching is murder, which is precisely what it is, and it punishes it as such. The only new crime it sets up is the crime of conniving at lynching. That is probably not sufficiently covered by our existing law, and that part of the bill needs no defense. The part that provides for penalties, as I have said, on the town, is at least controversial. There are unquestionably cases in which the heaviest burden would fall on the most innocent people; the taxpayers in a lynching, the well to do, and educated people very seldom in favor of lynching. They may find it impossible for various reasons to protest against it, but I have never heard of many of them being in favor of it.

At the time of the lynching in Maryland the decent people of the Eastern Shore were against it. They could do nothing, because after all they had to live there. They needed help from outside their own area. The Governor of Maryland at the time tried to give them that help, but it turned out under our constitutional laws in Maryland it was impossible to make that aid efficacious.

Are there any other questions, sir?

Senator VAN NUYS. We had several of the citizens of Maryland at our former public hearing.

Mr. MENCKEN. Yes, sir; I remember them, including one of the best public officials we ever had in the State of Maryland, Attorney General Lane.

Senator VAN NUYS. I took occasion to compliment him on his fearlessness as a public official.

Mr. MENCKEN. He is a fearless and an honest man.

Senator VAN NUYS. You were fairly familiar with that lynching, in a general way?

Mr. MENCKEN. In a general way, yes, sir. I do not know as much about it as Attorney General Lane.

Senator VAN NUYS. Has that added to the support of this sort of legislation in Maryland, or are you advised on it, Mr. Mencken?

Mr. MENCKEN. I am not advised. I would not undertake to answer that. My impression is that the decent people of the State of Maryland in the lynching area are heartily ashamed of the lynching, and one of the curious evidences of it is the vote that Governor Ritchie got in that area last election, although there was a very violent feeling against him immediately after the lynching.

I am in contact with very many of the better people of the Eastern Shore, and I think it is safe to say not one of them is in favor of the lynchings which took place there. They were carried on by the very low orders, and the most the upper sort of people did was do nothing, and the reason they did nothing was simply because they faced a sequel situation which could not be dealt with effectually.

Senator VAN NUYS. That is true in most of these lynchings, as relates to county authorities?

Mr. MENCKEN. I think so. After all, these people have got to go on living in that neighborhood.

Senator VAN NUYS. Yes.

Mr. MENCKEN. And the same mob that lynches a prisoner is quite apt to shoot them from ambush, or burn their house, or do something of the sort, and they have a natural fear for themselves and their families.

Senator COSTIGAN. Mr. Mencken, how do you account for the sheriff in Tennessee recently resisting a mob seeking to take a prisoner from his custody?

Mr. MENCKEN. I think that could be accounted for quite easily, Senator. Every now and then you get a good sheriff. Any sheriff could do the same. But I hope we do not have to offer any evidence that the sheriffs in America do not commonly come from the leading class of citizens. They are local politicos of a rather inferior type, and hence not much could be expected of them.

Senator COSTIGAN. In your judgment, if sheriffs were waited on by the leading people of the community and were urged to protect a prisoner by means of saving the taxpayer expense, do you think that sheriffs ordinarily would be responsive to such requests and would be more diligent in the protection of prisoners?

Mr. MENCKEN. I think they would in most cases, provided it would not be dangerous to the life and limbs of the taxpayers to approach them in the face of the mob. They would have to fight their way through the mob to get to the sheriff, probably.

Senator COSTIGAN. Usually such action is taken in advance of the gathering of the mob, and while rumors are current that a mob is being formed for the purpose.

Mr. MENCKEN. Usually there is some effort made to stop them down on the Eastern Shore. In one instance the sheriff made some effort to stop it. They disregarded it. The sheriff had the fear of his life, and he allowed them to go in order to save his own life.

Senator COSTIGAN. Ordinarily an alert sheriff can move the prisoner to some other place.

Mr. MENCKEN. He could nine times out of ten.

Senator VAN NUYS. Any further questions?

Senator COSTIGAN. No.

Senator VAN NUYS. Thank you very much, Mr. Mencken.

We have two other witnesses to be heard. The next is Dean Charles H. Houston, Dean of Howard University. We shall be very glad to hear from Dean Houston at this time.